

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA

v.

BYRON MOUNTAIN,  
Defendant.

**ORDER**

19 CR 700-4 (VB)

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**A change of plea proceeding is scheduled for December 18, 2020, at 2:30 p.m., for the purpose of the entry of a guilty plea.**

After consulting with defendant Mountain, by letter dated December 4, 2020, defense counsel has advised the Court that his client is willing to waive his right to be physically present at the change of plea hearing and consents to proceeding by videoconference. In addition, counsel has submitted proposed findings to permit the guilty plea allocution to be conducted remotely, pursuant to Section 15002(b)(2)(A) of the CARES Act. (Doc. #189). In response, the government states it does not believe there is an adequate basis for the necessary CARES Act finding. (Doc. # 190).

The government's objection is not frivolous. However, on balance, the Court finds that the guilty plea in this case cannot be further delayed without serious harm to the interests of justice for the following reasons:

1. Defendant has been detained for fourteen months while his case has been pending. As a result, according to experienced defense counsel, defendant is "totally stressed out" by the delay in resolving his case and would like to enter a guilty plea as quickly as possible. In the Court's view, notwithstanding that defendant is facing a lengthy prison sentence, further delay in entering a guilty plea and thus bringing the case to a close would be unnecessarily harsh to defendant.

2. Because of the worsening public health crisis, the Court has suspended in person proceedings unless absolutely necessary, which means that a resolution of this case will be further delayed for an uncertain length of time unless the plea can proceed remotely.

3. Also because of the worsening public health crisis, moving defendant back and forth to the courthouse poses unnecessary risks to defendant, the U.S. Marshals, and court staff.

4. In the Court's experience, once a defendant has agreed to enter a guilty plea in a case in which there have been protracted plea negotiations, as defense counsel says is the case is here, the plea should be taken, and the plea agreement should be consummated, as soon as possible.

Accordingly, the Court will proceed with the change of plea hearing as scheduled on December 18.

The parties are directed to comply with the following protocols:

1. The proceeding will be conducted through Skype for Business. In advance of the hearing, Chambers will email all counsel with further information on how to access the hearing. Those participating by video will click on the link or calendar invite to be provided by Chambers. Only the Court, the defendant, defense counsel, and counsel for the government will appear by video for the proceeding; all others will participate by telephone. Only one counsel per party may participate by video. Co-counsel, members of the press, and the public may access the audio feed of the conference by calling **(917) 933-2166** and entering **Conference ID 746536484#**.

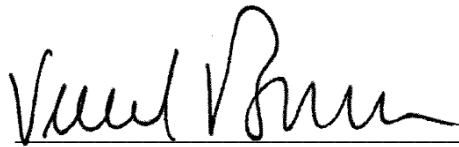
2. To optimize use of the Court's videoconferencing technology, all participants appearing by video must:

- a. Use a web browser other than Microsoft Explorer to access Skype for Business;
- b. Use hard-wired internet or WiFi. If using WiFi, the device should be positioned as close to the WiFi router as possible to ensure a strong signal. (Weak signals may cause delays or dropped feeds.)
- c. Minimize the number of others using the same WiFi router during the conference.

3. If Skype for Business does not work well enough and the Court decides to transition to its teleconference line, counsel and defendant should call **(888) 363-4749 (toll free)** **or** **(215) 446-3662** and use Access Code **1703567**. In that event, the Court will determine whether defendant agrees to proceed by telephone conference. (Members of the press and public may call the same number but will not be permitted to speak during the conference.)

Dated: December 4, 2020  
White Plains, NY

SO ORDERED:

A handwritten signature in black ink, appearing to read 'Vincent Briccetti', written over a horizontal line.

Vincent L. Briccetti  
United States District Judge